

The International Fuel Tax Agreement governs the taxation and reporting of fuel tax liabilities for "commercial motor vehicles" as that term is defined in Section 1.16 of the Motor Fuel Tax Law. (This is a GIL.)

October 15, 2002

Dear Xxxxx:

This letter is a follow-up to our earlier General Information Letter to you of October 3, 2002. In a subsequent telephone conversation, you noted that we had made several assumptions in responding to your inquiry, and requested that we issue a letter that did not contain these assumptions about the driveaways at issue. Specifically, the fourth paragraph of our response assumes that the driveaways do not fall within any of the specific exclusions from the definition of a "commercial motor vehicle," and that the driveaways at issue are semi-trailer tractor cabs. By removing these assumptions, our response is as follows:

In your letter of July 30, 2002, you stated and made inquiry as follows:

"An interpretation is hereby requested that the Department issue a letter advising that motor vehicles held by a manufacturer or dealer and held for sale which are delivered in "driveaway operations" are exempt from motor fuel tax in that these vehicles are not titled and/or licensed for delivery purposes. These vehicles as of this delivery are not in the stream of commerce. "

"As previously specifically addressed in Section 500.175 and 35 ILCS 505, the exempt status is now being misinterpreted by other states in their respective Audits. These States advise that Illinois needs to issue a Letter of Opinion as to this exempt status to prevent their auditors from disallowing the motor fuel tax exemption. Furthermore, these Auditors agree that with the benefit of a Letter from the Illinois Department of Revenue, they will immediately recognize the exemption/exempt status. "

"Subsequent to your review of this issue, please contact us to pursue the correct treatment of this matter."

Section 500.175, which you attached to your letter, is no longer a part of the administrative code. Its history is somewhat complicated, but basically, it was recodified, effective March 4, 1994, as Section 500.301. The provision about which you have inquired (i.e., the exclusion of driveaways from the definition of "commercial motor vehicle") was not substantively changed in this process, and remained in effect until February 28, 1995. Effective February 28, 1995, Section 500.301 was repealed in its entirety. This repealer was precipitated by Illinois' implementation of the International Fuel Tax Agreement ("IFTA"). Regulations were promulgated to redefine the term, "commercial motor vehicle," in conformance with IFTA. Section 500.100, which contained the new definition of

"commercial motor vehicle," became effective on February 28, 1995. We have attached a copy of this regulation for your review.

It is important to note that the old regulations (Section 500.175 and Section 500.301) merely reiterated an exemption that the Motor Fuel Tax Law, itself, provided for driveaways. This exemption was found at 35 ILCS 505/1.16. Public Act 88-480, effective January 1, 1994, implemented the IFTA and deleted the statutory exemption for driveaways. We have enclosed a copy of the section of PA 88-480 that deleted the driveway exemption and provided a new definition of "commercial motor vehicle."

As you can see, there is no longer a specific exclusion for driveaways. As a result, whether a driveway is subject to IFTA requirements will depend upon whether it falls within the current statutory definition of a "commercial motor vehicle."

We regret that we cannot provide a more specific determination, but hope that the information we have provided is helpful. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110 (b).

Very truly yours,

Jerilynn Gorden
Sr. Counsel, Sales & Excise Tax